

To Be Filed Under Seal

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

T-NETIX, INC.,

Plaintiff/Counter-Defendant,

V.

**VALUE-ADDED
COMMUNICATIONS, INC.**

Defendant/Counter-Plaintiff,

v.

SECURUS TECHNOLOGIES, INC.

Counter-Defendant.

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**Case No. 3:05-CV-0654-D (BK)**  
**ECF**

**THE SECURUS RESPONDENTS' UNOPPOSED MOTION TO SEAL THE  
FEBRUARY 25, 2013 HEARING TRANSCRIPT<sup>1</sup>**

Plaintiff/Counter-Defendant T-NETIX, Inc. (“T-NETIX”), Counter-Defendant Securus Technologies, Inc. (“Securus”), Richard A. Smith, individually, and Dennis J. Reinhold, individually (collectively, the “Securus Respondents”) hereby move this Court for an Order permanently sealing the entire February 25, 2013 Transcript of Value-Added Communications, Inc.’s (“VAC”) Show Cause Hearing Before the Honorable Magistrate Judge Renee Harris Toliver United States District Judge and all exhibits thereto (collectively, the “Transcript”) pursuant to Miscellaneous Order No. 61 of the United States District Court for the Northern District of Texas and pursuant to the Court’s Amended Order Withdrawing and Sealing Motion for Sanctions and Motion to Modify Protective Order and Related Documents, Orders, Minute

<sup>1</sup> The Securus Respondents' Unopposed Motion to Seal the February 25, 2013 Hearing Transcript is hereinafter referred to as the Motion to Seal the Transcript.

## THE SECURUS RESPONDENTS' UNOPPOSED MOTION TO SEAL THE FEBRUARY 25, HEARING TRANSCRIPT

Entries, and Docket References, and respectfully shows as follows:

**I. BACKGROUND FACTS**

1. On April 4, 2005, T-NETIX filed suit against Value-Added Communications, Inc. (“VAC”) for patent infringement. [Doc. #1].
2. On June 6, 2005, VAC filed a counterclaim against T-NETIX and, on December 5, 2005, joined Securus to the lawsuit and asserted a counterclaim against Securus. [Doc. #5].
3. On March 3, 2006, the Court signed an Agreed Protective Order (the “Protective Order”), which allowed certain confidential documents to be marked for Attorneys Eyes Only (“AEO”). [Doc. #44].
4. In August 2008, the parties entered into a settlement agreement disposing of their claims in this case. Pursuant to the settlement agreement, the following Motions were filed with the Court: (1) Joint Agreed Motion to Withdraw Motion for Sanctions and Motion to Modify Protective Order and Withdraw and Expunge Related Documents [Doc. #197]; (2) Joint Agreed Motion to Dismiss [Doc. #198]; and (3) Order of Dismissal With Prejudice [Doc. #199].
5. On August 6, 2008, the Court entered an order granting the Joint Agreed Motion to Dismiss, with Prejudice. [Doc. #199].
6. On August 8, 2008, the Court entered the Amended Order Withdrawing and Sealing Motion for Sanctions and Motion to Modify Protective Order and Related Documents, Orders, Minute Entries, and Docket References (the “August 8, 2008 Sealing Order”), pursuant to which certain documents, orders, recommendations, minute entries, and docket references thereto, including the transcript of the April 16, 2008 hearing before Magistrate Judge Sanderson regarding the McAlexander Rebuttal Report and Magistrate Judge Sanderson’s Report and Recommendation, were withdrawn and permanently sealed. [Doc. #200].

7. On August 24, 2012, VAC filed the following motions under seal:<sup>2</sup>

- a. VAC's Motion to Reopen Case to Present Application for Order to Show Cause Why T-NETIX, Inc., Securus Technologies, Inc., Richard A. Smith, Dennis J. Reinhold, and Gruber Hurst Johansen Hail LLP Should Not Be Held in Contempt of Court for Violation of the Court's March 3, 2006 Protective Order [Doc. # 201];
- b. VAC's Application for Order to Show Cause [Doc. #202];
- c. VAC's Motion for Leave to File Under Seal [Doc. #203]; and
- d. VAC's Brief in Support of Application for Order to Show Cause Why T-NETIX, Inc., Securus Technologies, Inc., Richard A. Smith, Dennis J. Reinhold, and Gruber Hurst Johansen Hail Shank LLP Should Not Be Held in Contempt of Court for Violation of the Court's March 3, 2006 Protective Order [Doc. #204].

8. On October 31, 2012, this Court granted VAC's motion to reopen the case and referred VAC's motion for an order to show cause to Magistrate Judge Toliver for further proceedings. [Doc. #228].

9. On November 9, 2012, Judge Toliver ordered the parties to respond to VAC's motion for an order to show cause. [Doc. #229]. The party respondents opposed VAC's motion and filed responses under seal. [Doc. ##230-235, 239-240, 242-245]. VAC filed its replies to the various responses under seal. [Doc. #236-238, 241].

10. On February 25, 2013, Judge Toliver heard VAC's Motion for an Order to Show Cause as to why certain parties should not be held in contempt for allegedly violating the Protective Order. [See Doc. #251].

11. On March 5, 2013, the court reporter for the February 25, 2013 proceedings filed the Notice of Filing Official Electronic Transcript of Show Cause Proceedings. [Doc. #274].

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<sup>2</sup> VAC's Motion for Leave to File Under Seal was granted on August 28, 2012. [Doc. #207].

## **II. ARGUMENTS AND AUTHORITIES**

### **A. A Party May Seek Relief from the Publication of Hearing Transcripts**

The United States District Court of the Northern District of Texas Miscellaneous Order No. 61 (“Misc. Order. No. 61”) states that full transcripts of court proceedings will be publically available either electronically or in the clerk’s office unless a party files a Redaction Request to remove certain confidential information or files a motion seeking additional relief within 21 calendar days of the date the transcript was filed. *See* Misc. Order 61(I)(D).

In this case, the Notice of Filing of Official Electronic Transcript of Show Cause Proceedings Held on 2/25/13 Before Magistrate Judge Renee Toliver was filed on March 5, 2013. [Doc. #274]. Thus, pursuant to Misc. Order No. 61, the Securus Respondents are timely filing this Motion to Seal the Transcript. The Court should seal the Transcript because it contains reference to and testimony regarding confidential documents and information subject to the Protective Order and the Court’s August 8, 2008 Sealing Order and because the motions, responses, and replies related to the subject matter of the February 25, 2013 hearing were all filed under seal.

### **B. The Transcript Should be Permanently Sealed**

The February 25, 2013 hearing included testimony and evidence concerning past actions and related documents that the parties previously agreed to withdraw and permanently seal. By way of example and not limitation, during the February 25, 2013 hearing, testimony and arguments were heard regarding the substance of the April 16, 2008 proceedings before Magistrate Judge Sanderson, the transcript and minute order of that hearing, and Judge Sanderson’s corresponding Report and Recommendation, all of which were permanently sealed by this Court’s August 8, 2008 Sealing Order [Transcript at 19:2-17; 30:8-31:9; 136:8-137:3;

Movant's Exhibits 2 & 3]. In fact, those portions of the February 25, 2013 hearing that were dedicated to allegations of actions occurring after entry of the August 8, 2008 Sealing Order are inextricably intertwined with testimony, argument, and exhibits related to documents and information covered by the August 8, 2008 Sealing Order. Accordingly, the February 25, 2013 Transcript should be permanently sealed so as to protect the parties' prior agreements and enforce the Court's August 8, 2008 Sealing Order.

### **III. CONCLUSION AND PRAYER**

For the foregoing reasons, the Securus Respondents respectfully request that this Court grant an Order permanently sealing the entire Transcript, with exhibits, of the February 25, 2013 Show Cause proceedings in this matter.

Respectfully submitted,

**BELL NUNNALLY & MARTIN LLP**

By: /s/ Jeffrey S. Lowenstein

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**ATTORNEYS FOR T-NETIX, INC.;  
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RICHARD A. SMITH; AND  
DENNIS J. REINHOLD**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on March 25, 2013, she conferred with Kenneth Kula, counsel for Defendant/Counter-Plaintiff Value-Added Communications, Inc. ("VAC") and Albert Starkus, counsel for Gruber Hurst Johansen Hail Shank LLP ("Gruber Hurst") regarding this motion. VAC and Gruber Hurst do not oppose the relief sought in this motion.

/s/ Gwen I. Walraven  
Gwen I. Walraven

**CERTIFICATE OF SERVICE**

On this 26<sup>th</sup> day of March 2013, I caused the foregoing document to be electronically filed with the Clerk of the Court for the Northern District of Texas, Dallas Division, using the case filing system of the Court.

I hereby certify that I have served all counsel of record electronically or by another manner by FED. R. CIV. P. 5(b)(2).

/s/ Gwen I. Walraven  
Gwen I. Walraven

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